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## **OLR Bill Analysis**

**sHB 5289 (as amended by House "A")\***

### ***AN ACT ESTABLISHING THE CONNECTICUT PORT AUTHORITY.***

#### **SUMMARY:**

This bill creates (1) the Connecticut Port Authority (authority) as a quasi-public agency to coordinate development of and market state ports, and (2) a port authority working group to prepare and submit recommendations to the Department of Economic and Community Development (DECD) on the authority's powers and duties.

It requires the DECD commissioner, after consulting with specified agencies, and within available appropriations, to (1) develop a plan to move the (a) Connecticut Maritime Commission and (b) Department of Transportation's (DOT) maritime functions to the authority and (2) review and make recommendations for state policies affecting the ports. Currently DOT's state maritime office is responsible for maritime operations and staffs the Maritime Commission, which advises the governor and legislature on maritime policy and supports port development (see BACKGROUND).

The bill exempts from the (1) petroleum products gross earnings tax, certain fuels used in ships primarily engaged in interstate commerce and (2) state motor vehicle fuels tax, fuel used by ships (a) primarily engaged in interstate commerce or (b) displacing more than 4,000 deadweight tons.

It also makes conforming changes.

\*House Amendment "A" replaces the original file (File 245). It (1) creates the port authority working group, (2) requires DECD to develop plans to transition DOT's maritime functions and those of the Maritime Commission to the port authority, (3) removes provisions (a) eliminating the Maritime Commission, (b) creating an office of

Maritime Development in DECD, and (c) elaborating on the port authority board's duties and powers.

EFFECTIVE DATE: October 1, 2015, except for the provisions (1) creating the working group and specifying its duties, (2) on the duties of the DECD commissioner, and (3) on fuel tax exemptions, which are effective on passage.

## **§ 2 — PORT AUTHORITY WORKING GROUP**

The bill creates a port authority working group, which terminates on October 1, 2015. The working group must prepare and make recommendations to DECD on the powers and duties of the Port Authority board of directors regarding:

1. employment and personnel practices and policies, including those related to hiring, promotion, compensation, retirement, and collective bargaining;
2. issuing bonds;
3. authority to (a) acquire, lease, purchase, own, manage, hold, and dispose of personal and real property and (b) make and enter into contracts and agreements; and
4. any other authority powers and duties.

### ***Working Group Membership***

The working group has at least 13 members, including the DECD commissioner and the treasurer, or their designees. Members must be appointed no later than 90 days after passage of the bill.

Appointed members include three members appointed by the governor and one member each, appointed as follows:

<b><i>Appointing Authority</i></b>	<b><i>Organization or Municipality Appointee Represents</i></b>
House speaker	Connecticut Marine Trades Association
House majority leader	Coastal municipality with a population of 100,000 or less
House minority leader	Connecticut Pilot Commission
Senate president pro tem	Connecticut Maritime Commission
Senate majority leader	New Haven
Senate minority leader	Connecticut Harbor Management Association
Transportation Committee co-chairs	New London

Transportation Committee ranking members	Bridgeport
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The DECD commissioner may appoint any other member she deems appropriate. The members of the working group select a chairperson from among its members. The chairperson must schedule and conduct working group meetings in consultation with the commissioner.

The commissioner must convene the first meeting of the working group no later than 90 days after the bill's passage, and it must meet at least once each month afterwards. DECD staffs the working group, within available appropriations.

### **§ 3 — DECD RESPONSIBILITIES**

Under the bill, the DECD commissioner, (1) within available appropriations, and (2) after consulting with the working group, DOT, the Office of Policy and Management secretary, and the Department of Energy and Environmental Protection (DEEP), must:

1. develop a (a) plan to move the DOT's maritime functions to the authority, (b) plan on the authority's bonding powers, and (c) proposed business and operating plan for consideration by the authority's board upon its creation;
2. develop a plan to move the Maritime Commission's functions to the authority after the authority is established;
3. review and recommend state policies that affect state ports;
4. coordinate state, regional, and local efforts to encourage the ports' growth; and
5. prepare and submit, by March 1, 2015, to the governor and the Commerce, Transportation, and Environment committees, a report of activities, findings, and recommendations on establishing the authority.

### **§ 1 — PORT AUTHORITY**

Under the bill, the authority is a body politic and corporate, a public

instrumentality and political subdivision of the state, created to perform an essential public and governmental function. It is a quasi-public agency, not a state department, institution, or agency, and as such is subject to statutory procedural, operating, and reporting requirements for quasi-public agencies, including lobbying restrictions and an ethics code.

The authority must:

1. coordinate port development, focusing on private and public investments;
2. pursue state and federal funding for dredging and other infrastructure improvements to increase movement of cargo through the ports;
3. market the ports' advantages to domestic and foreign shippers;
4. coordinate the planning and funding of capital projects promoting the ports' development; and
5. develop strategic entrepreneurial initiatives that may be available to the state.

The authority, instead of the Maritime Commission, must also recommend harbor improvement projects to the DOT commissioner.

The authority continues as long as it has bonds or other outstanding obligations and until it is legally terminated, provided that no such termination affects any of the authority's outstanding contractual obligations, and the state succeeds to such obligations. Upon the authority's termination, all of its rights and properties pass to and become vested in the state.

### ***Authority Powers***

Under the bill, the authority may:

1. have perpetual succession and adopt bylaws;
2. adopt and modify an official seal;
3. maintain one or more offices;

4. sue in its own name;
5. develop an organizational and management structure to best achieve its goals;
6. create a code of conduct for board members consistent with applicable law;
7. adopt rules, which are not considered regulations and therefore do not have to go through the regulatory approval process, to conduct its business; and
8. adopt an annual budget and operating plan, including a requirement that the board must approve the budget or plan.

### **§ 1 — BOARD OF DIRECTORS**

The authority is governed by a 15-member board of directors, each of whom is a voting member. Members include the commissioners of DEEP, DOT, and DECD, or their designees and the treasurer, or her designee, all of whom are ex-officio members. The governor appoints five members, two for four-year terms and three for two-year terms. The Senate president pro tempore, House speaker and House and Senate majority and minority leaders each appoint one member. The Senate appointees serve four-year terms; the House appointees, two-year terms. The appointees must have business and management experience and include people with experience or expertise in at least one of the following: (1) international trade, (2) marine transportation, (3) finance, or (4) economic development. Successor members appointed by the governor and the same legislative leaders serve four-year terms, starting on July 1 in the year of their appointment.

Eight directors comprise a quorum for the transaction of any business or exercise of any power. The board may act by a majority of the directors present at any meeting at which there is a quorum except as the bill provides. The board may delegate to eight or more directors necessary and proper powers and duties under the bill and the board's by-laws.

Appointed board members cannot designate someone to perform their duties for them in their absence. An appointed director who fails

to attend three consecutive meetings or half of all meetings held in a calendar year is deemed to have resigned from the board. Any vacancy that occurs other than by the expiration of a term is filled within 30 days in the same way as the original appointment for the remainder of the term.

***Officers***

The board selects a chairperson, vice-chairperson, and other officers it believes necessary, from its members. The chairperson serves a four-year term.

The initial board members may begin serving immediately on appointment, but cannot serve beyond the sixth Wednesday of the next regular legislative session, unless confirmed by the legislature according to law. All subsequent appointments must be made with legislative advice and consent according to law.

***Reimbursement and Conflicts of Interest***

Directors serve without compensation, but are reimbursed for actual and necessary expenses incurred performing their duties. Directors may be privately employed, or in a profession or business, subject to state ethics and conflict of interest laws, rules, and regulations. However, regardless of the law, it is not a conflict of interest for a trustee, director, partner, or officer of any person, firm, or corporation, or any person with a financial interest in such a person, firm, or corporation, to serve as a director, provided he or she complies with applicable state ethics laws.

***Removal of Board Members***

An appointing authority may remove a board member for inefficiency, neglect of duty, or misconduct in office. Before doing so, the appointing authority must give the director a copy of the charges against him or her and an opportunity for a hearing, no earlier than 10 days after notice, where the director may respond personally or through an attorney. When a director is removed, the appointing authority must file with the secretary of the state a complete statement of the charges against the director and the appointing authority's

findings on the charges, along with a complete record of the proceedings.

### ***Executive Director***

The board appoints an executive director as the authority's chief administrative officer. The executive director (1) is exempt from classified service and receives compensation set by the board, (2) serves at its pleasure, and (3) cannot be a board member. He or she must have extensive experience in developing and managing multi-use port operations.

The executive director directs and supervises administrative affairs and technical activities at the board's direction. He or she must approve all salaries, allowable expenses for the authority and its employees and consultants, and incidental authority expenses.

The executive director must attend all board meetings; keep a record of authority proceedings; and maintain and have custody of all books, documents, and papers filed with the authority, and the authority's minutes or journal and its official seal. He or she may have copies made of the authority's minutes, records, and documents, and may use the seal to certify them as true copies on which people may rely. The executive director must perform other duties as the board directs.

### ***Reporting Requirements***

The board must report annually, by December 15, on its (1) activities, (2) operating and financial statements, and (3) legislative recommendations to the governor and Commerce, Environment, and Transportation committees.

It must submit to the Appropriations, Commerce, Environment, and Transportation committees a copy of each authority audit conducted by an independent auditing firm no later than seven days after receiving it.

## **§§ 9 & 10 — FUEL TAX EXEMPTIONS**

The bill exempts, from the petroleum products gross earnings tax,

bunker fuel oil, intermediate fuel, marine diesel oil, and marine gas oil used in vessels primarily engaged in interstate commerce. The law already exempts these fuels when used in vessels displacing more than 4,000 dead weight tons. The bill also exempts from the motor vehicle fuels tax any fuel sold for use by any vessel either (1) primarily used in interstate commerce or (2) displacing more than 4,000 dead weight tons.

## **BACKGROUND**

### ***Current Port Administration***

Independent, locally created port authorities oversee the ports in Bridgeport, New Haven, and New London. No state or regional agency oversees local authority operation, but they operate under state statutes granting them broad powers to plan, finance, develop, and operate facilities in the locally designated port district (CGS §§ 7-329c to 329u). The current districts include privately owned and operated facilities, including docks and shipping terminals. New London's district includes the DOT-owned and managed state pier.

### ***Connecticut Maritime Commission***

By law, the commission, among other things:

1. advises the governor, transportation commissioner, and legislature on state maritime policy and operations;
2. develops and recommends a state maritime policy;
3. supports the development of the state's maritime commerce and industries, including its deep water ports; and
4. supports the development of the ports, including identifying new opportunities for them, analyzing the potential for and encouraging private investment in them, and recommending policies that support port operations.

The commission is part of DOT (CGS § 13b-51a).

### ***State Maritime Office***

This DOT office is responsible for maritime operations, including



the state pier in New London, serves as the governor's principal maritime policy advisor, and staffs the Connecticut Maritime Commission (CGS § 13b-51b).

**COMMITTEE ACTION**

Transportation Committee

Joint Favorable Substitute

Yea 32 Nay 0 (03/14/2014)

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 45 Nay 0 (04/11/2014)